



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JUL 17 2012

G. Rick Marshall, Designated Agent
Claude Todoroff, Treasurer
Turn Right USA
18016 South Western Ave,
Suite 223
Gardena, CA 90248

RE: MUR 6477

Dear Messrs. Marshall and Todoroff:

On June 23, 2011, the Federal Election Commission notified Turn Right USA ("Committee") and Claude Todoroff, as treasurer, and G. Rick Marshall, as designated agent, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On July 10, 2012, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe the Committee, and Claude Todoroff, in his official capacity as treasurer, and G. Rick Marshall, as designated agent, violated 2 U.S.C. § 441a. Additionally, the Commission also found that there is no reason to believe the Committee, and Claude Todoroff, in his official capacity as treasurer, violated 2 U.S.C. § 441d. Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact Dominique Dillenseger, the attorney assigned to this matter at (202) 694-1650.

Sincerely,

Peter G. Blumberg
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Turn Right USA and Claude Todoroff, **MUR 6477**
in his official capacity as Treasurer
G. Rick Marshall

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission by Dave Jacobson, Campaign Manager for Janice Hahn for Congress, alleging violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), by Turn Right USA and Claude Todoroff, in his official capacity as treasurer, and G. Rick Marshall, designated agent of TRUSA. *See* 2 U.S.C. § 437g(a)(1).

II. FACTUAL AND LEGAL ANALYSIS

A. Background

Complainant alleges that Turn Right USA ("TRUSA"), an independent-expenditure-only committee, produced an "incendiary, racist and sexist ad" attacking Janice Hahn, a candidate for U.S. Congress from California in 2011, in coordination with Hahn's opponent, Craig Huey and Huey's principal campaign committee, Friends of Craig Huey for Congress ("the Huey Committee"), in violation of Sections 441a and 441i(e) of the Act. Complainant also alleges that TRUSA falsely stated in its ad that the ad was "not authorized by any candidate or candidate's committee," in violation of Section 441d.

TRUSA denies the coordination allegations. TRUSA reported the ad as an independent expenditure and argues that the ad is not a coordinated communication because it does not meet the content or conduct prong of the coordinated communication

1 test under 11 C.F.R. § 109.21. The Huey Committee asserts that it had no contact with
2 TRUSA regarding the ad and was unaware of its production until after it was contacted
3 by the press for comments. Huey Committee Response to the Complaint.

4 Upon review of the complaint, responses, and other available information, there
5 appears to be no basis to conclude that TRUSA coordinated with the Huey Committee
6 regarding this ad. Therefore, the Commission found no reason to believe that Turn Right
7 USA, Claude Todoroff, in his official capacity as treasurer, and G. Rick Marshall, as
8 designated agent, violated 2 U.S.C. § 441a, or that Turn Right USA and Claude Todoroff,
9 in his official capacity as treasurer, violated 2 U.S.C. § 441d, and closed the file.

10 **B. Facts**

11 TRUSA is a political committee that registered with the Commission as an
12 independent-expenditure-only committee in June 2011. Claude Todoroff is TRUSA's
13 treasurer. TRUSA's Statement of Organization includes a letter stating that, consistent
14 with *SpeechNow.org v. FEC*, 599 F.3d, 686, 689 (D.C. Cir. 2010) (*en banc*), it intends to
15 make independent expenditures and raise funds in unlimited amounts, but will not use
16 those funds to make direct or in-kind contributions to, or coordinated communications
17 with, Federal candidates or committees.

18 In a complaint and amended complaint filed on June 17 and July 5, 2011,
19 respectively, Complainant alleges that TRUSA coordinated with Craig Huey and the
20 Huey Committee, in producing an attack ad directed at Huey's opponent for Congress,
21 Representative Janice Hahn. Huey and Hahn were candidates in the 36th Congressional
22 District of California running in a special runoff election held on July 12, 2011. Hahn
23 won the election.

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1 The ad was posted by TRUSA on its website and YouTube. The negative ad
2 flashes images of gangsters and criminal activity and contains words linking Hahn, who
3 at that time was a Los Angeles Councilwoman and a Federal candidate, to gang members
4 and gang-intervention programs. At the end of the ad is the statement "Donate Now Help
5 TRUSA Keep Janice Hahn Out of Congress," and a disclaimer "Paid for by Turn Right
6 USA (<http://TURNRIGHTUSA.org>) Definitely not authorized by any candidate or
7 candidate committee. So suck it, McCain-Feingold." *See*
8 <http://www.turnrightusa.org/janice-hahn-for-congress/>.

9 TRUSA reported the ad as an independent expenditure on its 2011 July Quarterly
10 Report. The disclosure report shows a \$5,792.12 disbursement to CampaignLA on June
11 14, 2011, for the "Internet Rap Video – Give me your cash," and lists Hahn as the federal
12 candidate supported or opposed by the expenditure.

13 As support for its coordination allegation, complainant cites: (1) TRUSA's and
14 Huey's use of a common vendor; (2) a former Huey Committee volunteer's involvement
15 with TRUSA; and (3) distribution by Huey campaign canvassers of a DVD containing
16 footage similar to that found in the TRUSA ad, suggesting that the ad may be a
17 republication of campaign materials.

18 As to the complaint's common vendor allegation, it states that TRUSA shares an
19 address with its vendor, CampaignLA, which was also a vendor to the Huey Committee,
20 as reported in the Huey Committee's pre-special election disclosure report. Complaint at
21 1; Amended Complaint at 1. Complainant asserts that TRUSA is further linked to
22 CampaignLA because domain name records for TRUSA's website, Turnrightusa.org, list
23 doug@campaignla.com as its registered agent and campaignla.com as a related domain.

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1 *Id.* Complainant also alleges that TRUSA employs a former Huey Committee volunteer,
2 G. Rick Marshall, TRUSA's designated agent, who had apparently volunteered for the
3 Huey Committee during the primary election "but left over [the Huey campaign's]
4 strategic direction." Complaint at 1 (citing a June 15, 2011, TRUSA press release).
5 Finally, complainant asserts that the DVD distributed by the Huey campaign canvassers
6 "contain[ed] footage identical" to that found in the TRUSA ad at issue in the complaint.
7 The DVD, which was submitted along with the complaint, is a copy of a report by Fox
8 News Channel 11 in Los Angeles regarding Hahn's involvement in a "gang intervention
9 program." The video of the report is available on the Fox 11 news site at
10 [http://www.myfoxla.com/dpp/news/investigative/Investigation Los Angeles Gang](http://www.myfoxla.com/dpp/news/investigative/Investigation%20Los%20Angeles%20Gang%20Intervention%20Money%20Going%20to%20Gang%20Members)
11 [Intervention Money Going to Gang Members](http://www.myfoxla.com/dpp/news/investigative/Investigation%20Los%20Angeles%20Gang%20Intervention%20Money%20Going%20to%20Gang%20Members).

12 The Huey Committee denies the coordination allegations, asserting it had no
13 contact with TRUSA regarding the ad and was unaware of the production of the ad until
14 after it was contacted by the press for comments.¹ Huey Committee Response to the
15 Complaint. The Huey Committee further asserts that it is unsure as to the connection the
16 complaint attempts to make between the video distributed by the Huey campaign and the
17 TRUSA YouTube ad because the former is a copy of a Fox News Story that aired on
18 April 30, 2008, while the latter is an independent expenditure of a "rap music parody of
19 candidate Hahn's budget priorities." Huey Committee Response to the Amended
20 Complaint.

¹ Several news accounts report that Huey made statements condemning the ad and denying that it was authorized or affiliated with his campaign. *See, e.g.,* <http://redondobeach.patch.com/articles/hahn-files-fec-complaint-against-huey> and <http://latimesblogs.latimes.com/california-politics/2011/06/youtube-video-roils-special-congressional-election.html>.

1 In a response filed by G. Rick Marshall and Claude Todoroff, TRUSA also denies
2 the coordination allegations. TRUSA acknowledges that it produced and paid for the
3 internet ad, but asserts that no violations occurred because the coordination standard was
4 not met. TRUSA asserts that the ad does not satisfy the content prong because it is not an
5 electioneering communication or a "public communication." TRUSA Response at 2-4.
6 TRUSA also asserts that the ad does not satisfy the conduct prong, because, TRUSA
7 contends, the Huey campaign had no involvement with the ad. *Id.* at 5-6. Responding to
8 the allegation that the Huey and TRUSA ad contained identical footage, TRUSA asserts
9 that the material for its ad came from a publicly available source, the Fox News Channel
10 11 Report on the gang intervention program, and that its ad, which it describes as a
11 parody of a rap song, was made and distributed before the Huey campaign materials on
12 gang intervention specialists were distributed. *Id.* at 3-6. Responding to the common
13 vendor allegations, TRUSA states that the vendor service provided by CampaignLA to
14 the Huey campaign consisted of the supply of "100 lawn signs," and is not the type of
15 vendor service enumerated under the common vendor rule. *Id.* at 6. Also, TRUSA notes
16 CampaignLA provided the services to the Huey campaign during the primary election, "a
17 period before anyone knew that Huey would be in a runoff with Hahn." *Id.* TRUSA
18 further states that, although TRUSA and CampaignLA share a common mailing address,
19 they have different mailboxes. *Id.*

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1 **C. Analysis**

2 **1. Coordination**

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4 The central issue in this matter is whether the ad paid for by TRUSA was, in fact,
5 an independent expenditure, as reported by TRUSA, or rather was coordinated with the
6 Huey Committee. The Act provides that no multicandidate committee shall make
7 contributions to any candidate and his or her authorized political committee with respect
8 to any election for Federal office, which in the aggregate, exceed \$5,000. 2 U.S.C.
9 § 441a(a)(2)(A). *See SpeechNow.org v. FEC*, 599 F.3d at 696; *see also* Advisory
10 Opinions 2010-09 (Club for Growth); 2011-11 (Commonsense Ten).

11 The Act provides that an expenditure made by any person “in cooperation,
12 consultation, or concert with, or at the request or suggestion of” a candidate or his
13 authorized committee or agent is a contribution to the candidate. *See* 2 U.S.C.
14 § 441a(a)(7)(B)(i); 11 C.F.R. § 109.20(a). A communication is coordinated with a
15 candidate, an authorized committee, a political party committee, or an agent thereof if it
16 meets a three-pronged test: (1) it is paid for, in whole or in part, by a third party (a
17 person other than the candidate, authorized committee or political party committee); (2) it
18 satisfies at least one of the five “content” standards described in 11 C.F.R. § 109.21(c);
19 and (3) satisfies at least one of the six “conduct” standards described in 11 C.F.R.
20 § 109.21(d). 11 C.F.R. § 109.21(a). In contrast, an independent expenditure is an
21 expenditure by a person for a communication expressly advocating the election or defeat
22 of a clearly identified candidate that is not made in cooperation, consultation, or concert
23 with, or at the request or suggestion of a candidate, a candidate’s authorized committee,

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1 or their agents, or a political party committee or its agents. 2 U.S.C. § 431(17); 11 C.F.R.
2 § 100.16.

3 In this matter, although the payment prong of the coordinated communication test,
4 11 C.F.R. § 109.21(a)(1), is satisfied because TRUSA is a third-party payor, the content
5 standard is not satisfied. The content prong is satisfied if the communication at issue
6 meets at least one of the following content standards: (1) a communication that is an
7 electioneering communication under 11 C.F.R. § 100.29; (2) a public communication that
8 disseminates, distributes, or republishes, in whole or in part, campaign materials prepared
9 by a candidate or the candidate's authorized committee; (3) a public communication that
10 expressly advocates the election or defeat of a clearly identified candidate for Federal
11 office; (4) a public communication, in relevant part, that refers to a clearly identified
12 House or Senate candidate, and is publicly distributed or disseminated in the clearly
13 identified candidate's jurisdiction 90 days or fewer before the candidate's primary
14 election; or (5) a public communication that is the functional equivalent of express
15 advocacy. *See* 11 C.F.R. § 109.21(c). The term "electioneering communication"
16 encompasses only broadcast, cable, and satellite communications and does not include
17 communications over the Internet. *See* 11 C.F.R. § 100.29(c)(1). The term "public
18 communication" encompasses broadcast, cable or satellite communication, newspaper,
19 magazine, outdoor advertising facility, mass mailing or telephone bank, or any other form
20 of general public political advertising, including communications over the Internet placed
21 for a fee on another person's website. 11 C.F.R. § 100.26.

22 Here, the content prong of the coordinated communication test is not met because
23 the ad does not appear to constitute an electioneering communication or public

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1 communication. According to TRUSA, the ad was posted on the Internet, on a public
2 website, and TRUSA did not pay any fees for posting it on any other person's website.
3 TRUSA's response at 2. TRUSA explains the ad was uploaded on YouTube and was
4 accessible to viewers with links to the ad either through email, links in news stories about
5 the ad or through TRUSA's website www.hahnshomeboyz.org. *Id.* There is no available
6 information to indicate that TRUSA paid a fee for placing the ad on another's website.

7 The available information does not indicate that the conduct prong was satisfied.
8 11 C.F.R. § 109.21(d)(1)-(6). Under the Commission's regulations, six types of conduct
9 between the payor and the committee, regardless of whether there is agreement or formal
10 collaboration, satisfy the conduct prong of the coordination standard: (1) the
11 communication "is created, produced, or distributed at the request or suggestion of a
12 candidate or an authorized committee," or if the communication is created, produced, or
13 distributed at the suggestion of the payor and the candidate or authorized committee
14 assents to the suggestion; (2) the candidate, his or her committee, or their agent, is
15 materially involved in the content, intended audience, means or mode of communication,
16 the specific media outlet used, the timing or frequency of the communication, or the size
17 or prominence of a printed communication or duration of a broadcast, cable or satellite
18 communication; (3) the communication is created, produced, or distributed after at least
19 one substantial discussion about the communication between the person paying for the
20 communication, or that person's employees or agents, and the candidate or his or her
21 authorized committee, his or her opponent or opponent's authorized committee, a
22 political party committee, or any of their agents; (4) a common vendor who has a
23 previous relationship (defined in terms of nine specific services) with the candidate, the

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1 candidate's authorized committee, the candidate's opponent or that opponent's authorized
2 committee or a political party committee, during the previous 120 days, and uses or
3 conveys information material to the creation, production, or distribution of the
4 communication; (5) a former employee or independent contractor uses or conveys
5 information material to the creation, production, or distribution of the communication;
6 and (6) the dissemination, distribution, or republication of campaign materials.
7 11 C.F.R. § 169.21(d)(1)-(6).

8 Both TRUSA and the Huey Committee deny that the Huey Committee was aware
9 of, or was involved with, this ad. *See* TRUSA Response at 4-6; Huey Committee
10 Response to the Complaint. There is no information to suggest otherwise. There is also
11 no available information indicating that the TRUSA ad was created, produced or
12 distributed at the request or suggestion of the Huey Committee, that the Huey Committee
13 was materially involved in the content or distribution of the ad, or that the ad was created
14 after a substantial discussion about the communication between representatives of
15 TRUSA and the Huey Committee. *Id.* Further, although TRUSA and the Huey
16 Committee shared a common vendor, CampaignLA (which provided yard signs to the
17 Huey Committee, and produced the Internet ad for TRUSA), there is no available
18 information indicating that CampaignLA used or conveyed information material to the
19 creation, production, or distribution of the communication. Similarly, although Marshall,
20 the designated agent for TRUSA and the person who filed TRUSA's response to the
21 complaint, was previously a volunteer (though not a former employee or independent
22 contractor) with the Huey campaign during the primary election campaign, the available

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information does not indicate that Marshall used or conveyed information material to the creation, production, or distribution of the communication.

The complaint also alleges that the ad may have republished Huey campaign materials and therefore satisfied the coordination test because the DVD distributed by Huey campaign canvassers contained similar footage to that found in the TRUSA ad. According to the Huey Committee, its canvassers distributed a DVD copy of a news report to voters. Huey Response to the Amended Complaint. Based on the copy of the DVD provided with the complaint, it appears to contain the same Channel 11 news report used by TRUSA in its ad. Under the facts of this matter, it appears that TRUSA used a news story, not campaign materials.

Accordingly, the Commission found no reason to believe that TRUSA, Claude Todoroff, in his official capacity as treasurer, and G. Rick Marshall, as designated agent, violated 2 U.S.C. § 441a.

2. Disclaimer

The Act and its accompanying regulations impose disclaimer requirements on certain types of communications: public communications made by a political committee containing express advocacy or soliciting contributions; all electioneering communications by any person; certain type and number of emails when sent by a political committee; and, all Internet websites of political committees available to the general public. 2 U.S.C. § 441d(a); 11 C.F.R. § 110.11(a). The disclaimer must state whether the communication was paid for and authorized by a candidate or candidate committee and identify who paid for and authorized the communication. *Id.*

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1 The TRUSA ad contains the following disclaimer: "Paid for by Turn Right USA
2 (<http://TURNRIGHTUSA.org>) Definitely not authorized by any candidate or candidate
3 committee. So suck it, McCain-Feingold."

4 Complainant alleges that the ad contained a false disclaimer stating that the ad
5 was not authorized by any candidate. As discussed above, the Commission concluded
6 that the ad was not authorized by the Huey campaign. Accordingly, there is no reason to
7 believe that Turn Right USA and Claude Todoroff, in his official capacity as treasurer,
8 violated 2 U.S.C. § 441d.

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